

REMARKS

In response to the above identified Office Action, the Applicants amend claims 6 and 18. The Applicants do not add any claims and do not cancel any claims. The Applicants submit that the amendments to claims 6 and 18 do not introduce any new subject matter because they add elements analogous to those already present in other independent claims. Thus, the inclusion of these additional elements narrows the issues for appeal by overcoming the § 102 rejection and the Applicants respectfully request that the Examiner enter these amendments.

I. Claim Rejections Under 35 U.S.C. § 102

Claims 6-8, 10, 11, 13, 18-20, 22, 23 and 25 stand rejected under 35 U.S.C. § 102 (e) as being anticipated by U.S. Patent No. 6,954,757 issued to Zargham, et al. (hereinafter "Zargham").

Independent claims 6 and 8 have been amended to include the elements of "the messaging service having no persistent state" (claim 6) and "the messaging service not maintaining a persistent state" (claim 18). The Examiner has acknowledged that Zargham fails to teach these elements of amended claims 6 and 18. See Office Action page 8. Instead, the Examiner has relied on a second reference in combination with Zargham to teach or suggest these elements in reference to the other independent claims. The Applicants address that rejection below.

II. Claim Rejections Under 35 U.S.C. § 103

Claims 1-5, 9, 12, 14-17, 21 and 24 stand rejected under 35 U.S.C. § 103 as being allegedly unpatentable over Zargham in view of U.S. Patent Application No. 2002/0078132 by Cullen et al., (hereinafter "Cullen").

To establish a *prime facie* case of obviousness, the Examiner must show that the combination of the cited references teaches or suggests each of the elements of the claims. In regard to independent claim 1, this claim includes the elements of a "message server having no

persistent state.” The Examiner acknowledges on page 8 of the final Office Action that Zargham fails to disclose this element of claim 1. The Examiner continues to rely on Cullen to cure the defects of Zargham, specifically, the Examiner relies on paragraph five of Cullen to teach or suggest this element of claim 1. Paragraph 5 of Cullen states:

In general, in one aspect, the disclosure describes a method of handling messages received at a messaging system server. The method includes storing, in non-persistent storage, messages received from at least one client, removing delivered messages from the non-persistent storage, and saving messages stored in the non-persistent storage to persistent storage after a delay interval.

See Cullen paragraph [005]. The cited paragraph from Cullen provides no teaching or suggestion as to the method in which Cullen handles message server *state* data. There is clearly no explicit disclosure that Cullen handles the messages without utilizing persistent state data, because the cited section does not discuss whether state data related to the messages is maintained. Cullen simply does not go into this level of detail. The Examiner in his comments on page 19 of the final Office Action appears to confuse a lack of explicit teaching or suggestion related to an element in the cited art reference as a positive teaching or suggestion that the element is excluded. In fact, one of ordinary skill in the art could not draw any reasonable inference related to an implementation of the management of message state data from this section of Cullen. One skilled in the art would understand that some state data for messaging must be tracked such as whether it has been successfully sent. In fact, if any inference were to be drawn from Cullen it would be that message state data would be maintained persistently, because Cullen discloses recovering messages after a failure which would most easily achieved by the storage of message state data persistently to assist in the recovery process and avoid having to determine the state of each message by other means.

The Applicants remind the Examiner that the burden establishing a *prima facie* case of obviousness rests with the Examiner and that the Examiner must establish that the combination of references teaches or suggests each and every limitation of a claim including the negative limitations by providing a “clear articulation of the reasons why the claimed invention would have been obvious.” See *KSR International v. Teleflex*, 550 US -, 82 USPQD 2d 1385, 1396 (2007). The silence of a reference regarding a negative limitation of a claim does not establish a *prima facie* case of obviousness, because the silence provides no guidance to one skilled in the

art as to whether the reference manages messages with persistent state data or without it. Further, the Examiner has not articulated any reasons as to why one skilled in the art would implement the messaging system of Cullen without persistent state data.

Further, the Examiner's position that the persistent storage of messages in Cullen is an "extra feature" is nonsensical. Utilizing this logic, any negative limitation could be said to be taught by a reference by merely labeling contradictory methods and structures of references that do not fit the negative limitation as "extra features." In fact, Cullen clearly teaches persistently storing at least some messages as backup, as the Examiner admits on page 19 of the final Office Action. The persistent storage of any message related data means that Cullen cannot meet the recited limitations of a messaging source having no persistent state.

Thus, the Applicants request that the Examiner clarify on what basis the cited references explicitly or implicitly teach or suggest a message server that does not maintain a persistent state. Accordingly, reconsideration and withdrawal of the obviousness rejection of claim 1 are requested.

In regard to claims 2-5, these claims depend from claim 1 and incorporate the limitations thereof. Thus, at least for the reasons mentioned above in regard to independent claim 1, these claims are not obvious over Zargham in view of Cullen. Accordingly, reconsideration and withdrawal over the obviousness rejection of claims 2-5 are requested.

In regard to claims 9, 12, 16, 21 and 24, each of these claims include elements analogous to those of independent claim 1. Specifically, they include elements relating to a message server having no persistent state or restarting the message server without recovering its state. The Examiner relies on the same section of Cullen and the same misinterpretation of its teachings either directly or indirectly in the rejection of each of these claims. Thus, at least for the reasons mentioned above in regard to claim 1, the Examiner has not established that Zargham in view of Cullen teaches or suggests each of the elements of these claims. Accordingly, reconsideration and withdrawal of the obviousness rejection of these claims is requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending, namely claims 1-25, are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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